

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUAN DAVILA-BAJANA,

Plaintiff,

v.

TIM HOLOHAN, et al.,

Defendants.

Civil Action No. 04-253 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 7, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Amended Report and Recommendation [Doc. No. 90], filed on August 28, 2007, recommended that Defendants' motion to dismiss or in the alternative for summary judgment [Doc. No. 63] be granted and that Plaintiff's proposed amended complaint [Doc. No. 86] be dismissed as futile. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Plaintiff was granted an extension until September 21, 2007 to file objections [Doc. No. 91]. Plaintiff filed objections on September 25, 2007 [Doc. No. 93]. After de novo review of the motion and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 6th day of December, 2007;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss or in the alternative for summary judgment [Doc. No. 63] is GRANTED and Plaintiff's proposed amended complaint [Doc. No. 86] is DISMISSED as futile.

The Report and Recommendation [Doc. No. 90] of Magistrate Judge Baxter, filed on August 28, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge